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Eminent Domain--Remedies of Property Owners--Standing to Sue [*Green St. Assn v. Daley*, 373 F.2d 1 (7th Cir. 1967)]

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EMINENT DOMAIN — REMEDIES OF PROPERTY OWNERS — STANDING TO SUE

Green St. Ass'n v. Daley, 373 F.2d 1 (7th Cir. 1967).

Civil rights and urban renewal are two contemporary topics of controversy, and both are subjects of federal legislation which has produced considerable activity in the courts and administrative agencies.[1] In *Green St. Ass'n v. Daley*,[2] federal urban renewal and housing legislation were merged in issue with the Civil Rights Act of 1964 for the first time in a federal court.[3]

The plaintiffs,[4] Negro owners and lessees of property located within a renewal project area,[5] sought declaratory and injunctive relief against local and federal housing officials.[6] Ostensibly, the project had for its purpose the redevelopment of a shopping center and the construction of a mall, arcade, parking lot, streets, and bypasses.[7] The project had been approved by the Chicago City Council and the Housing and Home Finance Administration (HHFA).[8]

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[1] Attention will be focused upon the following statutes: Housing Act of 1949, §§ 105 (c), (d), 63 Stat. 417, as amended, 42 U.S.C. §§ 1455 (c), (d) (Supp. 1966); Civil Rights Act of 1964, §§ 601-03, 78 Stat. 252, 42 U.S.C. §§ 2000d to d-2 (1964).

[2] 373 F.2d 1 (7th Cir. 1967), *affirming* 250 F. Supp. 139 (N.D. Ill. 1966).

[3] In Thompson v. Housing Authority, 251 F. Supp. 121 (S.D. Fla. 1966), reported after *Green St. Ass'n*, Civil Rights Act claims were made but not so identified. *Accord*, Tate v. City of Eufaula, 165 F. Supp. 303 (M.D. Ala. 1958).

[4] The Green Street Association is an Illinois non-profit corporation organized by residents of Chicago's Central Englewood area to protect their interests in the urban renewal project. No issue was raised concerning the capacity of the association to bring the action. *Cf.* NAACP v. Alabama, 357 U.S. 449 (1958).

[5] The project area consisted of approximately seventy-five acres and was a section of the three-thousand-acre Englewood Conservation Area. Within the project were approximately three hundred buildings containing six hundred dwelling units. 373 F.2d at 3-4.

[6] The district court held that the federal officials were protected by sovereign immunity and that the United States had not given its consent to be sued. Green St. Ass'n v. Daley, 250 F. Supp. 139, 144 (N.D. Ill. 1966). The issue was not raised on appeal. In FHA v. Burr, 309 U.S. 242 (1940), the Supreme Court held that since the National Housing Act authorized the Federal Housing Administrator to sue or be sued, immunity was waived and no other consent was necessary. The Housing Act of 1949, § 106(c) contains a similar provision. 63 Stat. 418, 42 U.S.C. § 1456 (c) (1964). In Gart v. Cole, 166 F. Supp. 129 (S.D.N.Y. 1958), *aff'd*, 263 F.2d 244 (2d Cir.), *cert. denied*, 359 U.S. 978 (1959), the HHFA was held to be subject to suit in any district in which it has an office or does business.

[7] Although the Housing Act of 1949 was originally enacted to effect slum clearance and achieve housing redevelopment, the statute was later amended to comprehensively attack urban decay. Housing Act of 1954, §§ 301-03, 68 Stat. 622-24, as amended, 42 U.S.C. § 1451 (Supp. 1966), amending Housing Act of 1949, § 101, 63 Stat. 414.

[8] 373 F.2d at 4.

In the first count of their petition,[9] the plaintiffs alleged a conspiracy to deprive them of their property[10] and that local officials were induced to make use of their official powers to accomplish Negro clearance.[11] The plaintiffs relied upon *Progress Dev. Corp. v. Mitchell*,[12] which held that a real estate development corporation was entitled to relief if it could show that the sole purpose of village officials in instituting condemnation proceedings was to deny the plaintiff equal protection of the laws.[13] The defendants urged the court[14] to follow its decision in *Harrison-Halsted Community Group, Inc. v. HHFA*.[15] In that case the plaintiffs sought judicial review of an urban renewal plan to use property as a university site rather than to commence rehabilitation of the area as was previously decided. The *Harrison-Halsted* court held that the plaintiffs lacked standing because no private rights of the plaintiffs were infringed and no substantial federal question was presented.[16]

In considering the applicability of *Progress*,[17] the *Green St. Ass'n* court pointed to the allegations made in that case — that the Deerfield officials were not acting to further a public purpose and that they were acting solely to acquire the plaintiff's property in violation of its right to do business.[18] The court reasoned that *Progress* was construed to be essentially a civil rights case and that the issue of eminent domain was only relevant in the context of the denial of equal protection claims.[19] Comparable allegations

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[9] In the district court the plaintiffs asserted five counts; however, two of them were not raised on appeal: (1) that the project violated the purpose of the Housing Act of 1949; and (2) that it did not conform to state law requirements. Green St. Ass'n v. Daley, 250 F. Supp. 139, 141-42 (N.D. Ill. 1966).

[10] The area in dispute was occupied by an eighty-five percent Negro plurality. 373 F.2d at 4.

[11] Jurisdiction was claimed under 28 U.S.C. § 1343 (1964); Civil Rights Act of 1871, 17 Stat. 13, 42 U.S.C. § 1983 (1964); Civil Rights Act of 1964, § 601, 78 Stat. 252, 42 U.S.C. § 2000d (1964).

[12] 286 F.2d 222 (7th Cir. 1961).

[13] *Id.* at 231-32; see note 18 *infra.*

[14] 373 F.2d at 5.

[15] 310 F.2d 99 (7th Cir. 1962), *cert. denied*, 373 U.S. 914 (1963).

[16] *Id.* at 106.

[17] The court found *Harrison-Halsted* inapplicable insofar as the jurisdictional claims were concerned. 373 F.2d at 5.

[18] Progress Dev. Corp. v. Mitchell, 286 F.2d 222, 226 (7th Cir. 1961). The emphasis that the court placed on its use of the word "solely" in *Progress* is deceiving. It appeared only once in the eleven-page opinion. *Ibid.*

[19] 373 F.2d at 5.

were not made in *Green St. Ass'n*,[20] and the court therefore found *Progress* inapposite.[21]

It would appear, then, that a federal court will pass upon the exercise of eminent domain *prior* to the commencement of condemnation proceedings where the complaint convincingly alleges facts which demonstrate the absence of a public use or purpose and the intent *solely* to deny the plaintiff some constitutional right.[22] However, where the allegations manifest the presence of a strong public purpose[23] and a competing denial of individual constitutional rights, the federal court will not interfere,[24] for the state court is assumed adequate to protect the plaintiff's federal constitutional rights.[25]

After disposing of *Progress*, the court in *Green St. Ass'n* found it necessary only to make a few cursory observations regarding eminent domain to justify the affirmance of the district court's dismissal of count one: " 'the power is deemed essential to the life of the State' ";[26] it is legislative in character;[27] only the actual, avowed purpose will be examined and not the underlying motives;[28] and

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[20] *Id.* at 6.

[21] *Ibid.* The case is therefore to be construed as essentially involving the power of eminent domain.

[22] The court's position cannot be as inexorable as it appears. Certainly the federal courts will avail themselves to a plaintiff, prior to condemnation proceedings, where an irreparable injury in derogation of his constitutional rights would otherwise result. Progress Dev. Corp. v. Mitchell, 286 F.2d 222, 231-32 (7th Cir. 1961).

[23] The district court in *Green St. Ass'n* noted that if the plaintiffs were successful in bringing this action, they would prevent the improvement of the Englewood area and foster the segregated residential pattern in existence there. Green St. Ass'n v. Daley, 250 F. Supp. 139, 147 (N.D. Ill. 1966).

[24] A balancing process was apparently employed by the court to resolve these matters. If the public purpose weighs heavily, the court is prone to resist jurisdiction by construing the complaint as involving the exercise of police power. The stronger the assertion of a constitutional claim, the more it will mitigate against that construction. *Cf.* Griswold v. Connecticut, 381 U.S. 479 (1965). However, the question arises whether the higher the right stands in the constitutional hierarchy, the more likely it will be found to prevail over other issues.

[25] 373 F.2d at 6-7, citing Baber v. Texas Util. Co., 228 F.2d 665, 666 (5th Cir. 1956). In the state condemnation proceedings related to *Progress*, Deerfield Park Dist. v. Progress Dev. Corp., 22 Ill. 2d 132, 174 N.E.2d 850 (1961), it was said: "If parks are needed in Deerfield, and if the land so selected for them is appropriate for that purpose, the power of eminent domain cannot be made to depend upon the peculiar . . . predilections of . . . the affected property owner." *Id.* at 140-41, 174 N.E.2d at 855.

[26] 373 F.2d at 6, citing Georgia v. City of Chattanooga, 264 U.S. 472, 480 (1924).

[27] 373 F.2d at 6; see Berman v. Parker, 348 U.S. 26 (1954).

[28] Atlantic Coast Line R.R. v. Town of Sebring, 12 F.2d 679 (5th Cir. 1926); City of Chicago v. R. Zwick Co., 27 Ill. 2d 128, 188 N.E.2d 489, *appeal dismissed sub nom.* Gonzalez v. City of Chicago, 373 U.S. 542 (1963); Deerfield Park Dist. v. Progress Dev. Corp., 22 Ill. 2d 132, 174 N.E.2d 850 (1961); *accord*, Berman v. Parker, 348 U.S. 26 (1954); 11 MCQUILLIN, MUNICIPAL CORPORATIONS § 32.25, at 321-22 (3d ed. 1964). Whether the taking is for a public use or purpose is a question of law.

the issue whether the declared purpose is "public" is to be decided by the state court in condemnation proceedings.[29]

In count two of the complaint the plaintiffs alleged that they were not permitted to call witnesses on their own behalf or to cross-examine witnesses supporting the project but were restricted to reading a prepared statement at the hearing before a committee of the Chicago City Council.[30] This, they asserted, constituted a failure to conform to the hearing requirements of the Housing Act of 1949[31] and was a denial of due process.[32] In *Harrison-Halsted* the adequacy of the hearing was also challenged, the argument being that the Housing Act's silence was not intended to preclude review[33] and that section 10 of the Administrative Procedure Act[34] provided for such review. The court disagreed on the ground that section 10 confers standing upon those who have suffered an injury to their private legal rights, as distinguished from injuries of a purely economic nature, and therefore it provides no basis for judicial review of an urban renewal program.[35] The court in *Green St. Ass'n*

Berman v. Parker, *supra* note 27; Rindge Co. v. Los Angeles, 262 U.S. 700, 705 (1923); Sears v. City of Akron, 246 U.S. 242, 251 (1918); Zurn v. City of Chicago, 389 Ill. 114, 59 N.E.2d 18 (1945); Limits Indus. R.R. v. American Spiral Pipe Works, 321 Ill. 101, 151 N.E. 567 (1926). But the necessity or expediency of the taking is a matter for the legislature to decide. Berman v. Parker, *supra* note 27; Rindge Co. v. Los Angeles, *supra* at 709; Sears v. City of Akron, *supra*; Backus v. Fort St. Union Depot, 169 U.S. 557, 568 (1898); Boom Co. v. Patters 98 U.S. 403, 406 (1878); Zurn v. City of Chicago, *supra*; Wilson v. City of Long Branch, 27 N.J. 360, 142 A.2d 837, *cert. denied*, 358 U.S. 873 (1958); 11 MCQUILLIN, *op. cit. supra*, at 323.

[29] Zurn v. City of Chicago, *supra* note 28.

[30] 373 F.2d at 7.

[31] Housing Act of 1949, § 105 (d), 63 Stat. 417, 42 U.S.C. § 1455 (d) (1964): "No land for any project to be assisted under this subchapter shall be acquired . . . except after public hearing following notice of the date, time, place, and purpose of such hearing."

In Johnson v. Redevelopment Agency, 317 F.2d 872 (9th Cir.), *cert. denied*, 375 U.S. 915 (1963), the court, while holding that the plaintiffs had no standing under the Housing Act of 1949 to enjoin the municipal agency from carrying out project plans, noted that they nevertheless had an administrative channel for the assertion of their grievances — by presentation to the HHFA administrator.

[32] For purposes of jurisdiction the plaintiffs relied upon the Administrative procedure Act § 10, 60 Stat. 243 (1946), 5 U.S.C. § 1009 (1964) and 28 U.S.C. § 1331 (1964).

[33] 310 F.2d at 102. *Contra*, Administrative Procedure Act § 10(c), 60 Stat. 243 (1946), 5 U.S.C. § 1009(c) (1964): "Every agency action reviewable by statute and every final agency action for which there is no other adequate remedy in any court shall be subject to judicial review."

[34] 60 Stat. 243 (1946), 5 U.S.C. § 1009 (1964).

[35] 373 F.2d at 7. This is to say that the plaintiffs have suffered no direct injury distinguishable from the indefinite injury inflicted upon the general community. Frothingham v. Mellon, 262 U.S. 447 (1923); Gart v. Cole, 166 F. Supp. 128 (S.D. N.Y. 1958), *aff'd*, 263 F.2d 244 (2d Cir.), *cert. denied*, 359 U.S. 978 (1959). The in-

adopted this reasoning in holding that the district court's dismissal of count two was proper.[36]

The Supreme Court has held that notice and a hearing are not constitutionally required prior to condemnation proceedings.[37] Thus, even if no hearing had been provided in *Green St. Ass'n*, the plaintiffs would have lacked standing to object, for a hearing on a legislative act is not essential to due process.[38] Thus, a recipient of federal funds need provide only a hearing in form to avoid friction with the HHFA.[39]

Unfortunately, one consequence of the decision is that the project-area resident is denied any effective voice in the urban renewal plan. If he attempts to invoke the jurisdiction of a federal court to review the plan, he will be found to lack standing.[40] If

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jury must be to a legal right (as opposed to a purely economic one). Tennessee Elec. Power Co. v. TVA, 306 U.S. 118 (1939); Alabama Power Co. v. Ickes, 302 U.S. 464 (1938). Theories of contract have not provided the foundation of legal rights in urban renewal or eminent domain cases. "A condemnee has no legal interest in the source of a condemnor's funds." City of Chicago v. R. Zwick Co., 27 Ill. 2d 128, 132, 188 N.E.2d 489, 491, *appeal dismissed sub nom.* Gonzalez v. City of Chicago, 373 U.S. 542 (1963); City of Chicago v. Sanitary Dist., 272 Ill. 37, 111 N.E. 491 (1916); Chicago Burlington & Quincy R.R. v. City of Naperville, 169 Ill. 25, 48 N.E. 335 (1897).

"One who will be injured by another's lawful use of money has no standing to assert that a third person's action in providing the money will be illegal." Allied-City Wide, Inc. v. Cole, 230 F.2d 827, 828 (D.C. Cir. 1956), citing Alabama Power Co. v. Ickes, *supra* at 480-81. The third party beneficiary doctrine has been argued, without success. as a basis for standing. City of Chicago v. R. Zwick Co., *supra*, citing *Harrison-Halsted*; Hunter v. City of New York, 121 N.Y.S.2d 841, 846 (Sup. Ct. 1953); *cf.* H. R. Moch Co. v. Rennsselaer Water Co., 247 N.Y. 160, 159 N.E. 896 (1928) (no discernible intention to benefit individual members of the public).

[36] The court further held that no substantial federal question of due process was raised. See Rindge Co. v. Los Angeles, 262 U.S. 700, 709 (1923); Combs v. Illinois State Toll Highway Comm'n, 128 F. Supp. 305 (N.D. Ill. 1955).

[37] Georgia v. City of Chattanooga, 264 U.S. 472 (1924); Robinette v. Chicago Land Clearance Comm'n, 115 F. Supp. 669, 673 (N.D. Ill. 1951); Ross v. Chicago Land Clearance Comm'n, 417 Ill. 377, 108 N.E.2d 776 (1952); Wilson v. City of Long Branch, 27 N.J. 360, 142 A.2d 837, *cert. denied*, 358 U.S. 873 (1958); David Jeffrey Co. v. City of Milwaukee, 267 Wis. 559, 66 N.W.2d 362 (1954). *But see* Hendershott v. Rogers, 237 Mich. 338, 211 N.W. 905 (1927) (constitutional requirement). Of course, due process does require notice and hearing for the purpose of fixing compensation. Walker v. City of Hutchinson, 352 U.S. 112 (1956).

[38] Rindge Co. v. Los Angeles, 262 U.S. 700, 708-09 (1923) (unanimous opinion); Bragg v. Weaver, 251 U.S. 57, 58 (1919). The delegation of legislative authority to the municipality does not entitle landowners to a hearing prior to a determination of necessity. Rindge Co. v. Los Angeles, *supra*; Joslin Mfg. Co. v. City of Providence, 262 U.S. 668, 678 (1923); Sears v. City of Akron, 246 U.S. 242, 251 (1918).

[39] Section 105(d) of the Housing Act of 1949, 63 Stat. 417, 42 U.S.C. § 1455 (d) (1964) does not give individuals a statutory right to a hearing. Gart v. Cole, 166 F. Supp. 128 (S.D.N.Y. 1958), *aff'd*, 263 F.2d 244 (2d Cir.), *cert. denied*, 359 U.S. 978 (1959). Nor is it necessary that the hearing be held by the agency acquiring the land. See Bowker v. City of Worcester, 334 Mass. 422, 136 N.E.2d 208 (1956).

[40] *E.g.*, Johnson v. Redevelopment Agency, 317 F.2d 872 (9th Cir.), *cert. denied*,

he resorts to a state court, he will find that it does not have power to review the action of the HHFA administrator.[41] However, the role of the resident in the urban renewal process may be a significant one, and a better forum should be made available for the presentation of his views.[42] For this reason Congress should enact legislation requiring the local planning commission to conduct public hearings, early in the planning stage,[43] suitable to the expression of residents' views, and conducive to resident participation throughout the planning process. Residents should also be able to compel full disclosure of tentative project plans, to propose alternatives and changes, to call witnesses and cross-examine adversaries, and to secure representation on the commission.

In their final count the plaintiffs alleged that the relocation provisions promulgated in the Central Englewood urban renewal plan were not "feasible."[44] They maintained that the plan, by expressly acknowledging the segregated residential patterns in Chicago and by providing separate relocation facilities for project displacees based on race, violated section 601 of the Civil Rights Act of 1964.[45] They also contended that the local and federal defendants, in approving the plan, violated the plaintiffs' rights to equal protection of the laws.[46]

Viewing the claims as against federal officials, the court reasoned that section 601[47] could not be divorced from sections 602

375 U.S. 915 (1963); Harrison-Halsted Community Group, Inc. v. HHFA, 310 F.2d 99 (7th Cir. 1962), *cert. denied*, 373 U.S. 914 (1963); Allied-City Wide, Inc. v. Cole, 230 F.2d 827 (D.C. Cir. 1956). For suggested improvements in the judicial approach to standing, see Jaffe, *Standing To Secure Judicial Review: Public Actions*, 74 HARV. L. REV. 1265 (1961).

[41] Hunter v. City of New York, 121 N.Y.S.2d 841 (Sup. Ct. 1953); *cf.* McClung v. Silliman, 19 U.S. (6 Wheat.) 598 (1821) (state court may not subject federal officer to mandamus). State courts have also held that the property owner has no standing. *E.g., In re* Bunker Hill Urban Renewal Project 1 B, 61 Cal. 2d 21, 389 P.2d 538, 37 Cal. Rptr. 74 (1964); City of Chicago v. R. Zwick Co., 27 Ill. 2d 128, 188 N.E.2d 489, *appeal dismissed sub nom.* Gonzalez v. City of Chicago, 373 U.S. 542 (1963) (condemnation correlative to *Harrison-Halsted*).

[42] This is especially true when a rehabilitation program is involved. The Cleveland PATH committee recommends an active citizen role. PATH REPORT 20 (1967).

[43] Frequently, hearings are provided after the plan has so progressed that changes would not be practical. Thus, the hearing becomes an ineffective medium for resident expression. See Note, 72 HARV. L. REV. 504, 514 (1959).

[44] 373 F.2d at 7, citing to Housing Act of 1949, § 105(c), 63 Stat. 417, as amended, 42 U.S.C. § 1455 (c) (Supp. 1966).

[45] 78 Stat. 252, 42 U.S.C. § 2000d (1964).

[46] The court held that plaintiffs did not have standing to attack the plan under the Housing Act provisions. 373 F.2d at 8, citing Harrison-Halsted Community Group, Inc. v. HHFA, 310 F.2d 99 (7th Cir. 1962), *cert. denied*, 373 U.S. 914 (1963); *accord*, Barnes v. City of Gadsden, 268 F.2d 593 (5th Cir. 1959).

[47] Civil Rights Act of 1964, § 601, 78 Stat. 252, 42 U.S.C. § 2000d (1964) reads:

and 603.[48] Construed together, the three sections declare a national policy,[49] provide the agency with a procedure for implementing that policy,[50] and secure judicial review in favor of a *recipient* aggrieved by a denial of agency funds for its violation.[51] If individuals were able to sue for an injunction against HHFA officials, the congressionally prescribed administrative procedure would be circumvented.[52]

In asserting their claim against the local defendants, the plaintiffs placed emphasis upon the recent decision of *Bossier Parish School Bd. v. Lemon.*[53] In *Lemon*, Negro Air Force personnel brought an action for relief from the local school board's refusal to permit their children to attend integrated schools which were receiving federal funds. The court held that in the absence of a procedure through which individuals protected under section 601 could defend their rights, judicial action was justified.[54] Although the court in *Green St. Ass'n* did not yield to the *Lemon* rationale, it assumed its correctness *arguendo*[55] and affirmed the district court's dismissal of the action on the ground that mere recognition or acknowledgement of segregation does not constitute state action.[56]

"No person in the United States shall, on the ground of race, color, or national origin . . . be subjected to discrimination under any program or activity receiving Federal financial assistance."

[48] Civil Rights Act of 1964, §§ 602, 603, 78 Stat. 252-53, 253, 42 U.S.C. §§ 2000d-1, d-2 (1964).

[49] The plaintiffs construed § 601 as "implicitly" conferring standing upon them as ultimate beneficiaries under the act. 373 F.2d at 8; *accord*, Bossier Parish School Bd. v. Lemon, 370 F.2d 847 (5th Cir. 1967); *cf.* J. I. Case Co. v. Borak, 377 U.S. 426 (1964). The district court in *Green St. Ass'n* thought that § 601 was intended to protect *recipients* of federal funds. Green St. Ass'n v. Daley, 250 F. Supp. 139, 146 (N.D. Ill. 1966).

[50] Section 602 empowers federal agencies to terminate or refuse federal funds or to resort to "any other means authorized by law" to effect compliance with § 601, provided that the agency has informed the persons affected of their noncompliance and has determined that compliance will not voluntarily be achieved. 78 Stat. 252-53, 42 U.S.C. § 2000d-1 (1964). In a case of termination of or refusal to grant funds, agency action will not become effective until thirty days after a report is filed with the appropriate congressional committees. *Ibid.*

[51] Section 603 expressly deems agency action under title V reviewable. See Administrative Procedure Act § 10(c), 60 Stat. 243 (1946), 5 U.S.C. § 1009 (1964).

[52] 373 F.2d at 9. *But see* Bossier Parish School Bd. v. Lemon, 370 F.2d 847, 852 (5th Cir. 1967).

[53] 370 F.2d 847 (5th Cir. 1967).

[54] *Id.* at 852.

[55] 373 F.2d at 9.

[56] *Ibid.*; *accord*, Watson v. City of Memphis, 373 U.S. 526 (1963). If use of the relocation facilities by displacees were compulsory, then an analogy could be drawn to the school cases. Wright, *Public School Desegregation: Legal Remedies for De Facto Segregation*, 16 W. RES. L. REV. 478, 488 (1965). Strictly construed, the holding in

Further, the local defendants exercised no control over the existing segregated residential patterns.[57]

Whether the *Lemon* reasoning will ultimately be applied to urban renewal cases is questionable.[58] Given the grounds in *Green St. Ass'n* for the conclusion that a judicially cognizable claim was not stated, it is submitted that the complaint would be elevated from statutory to constitutional dimensions and would be construed "as essentially involving civil rights rather than as raising specific questions relating to eminent domain."[59] Relief would then not require reliance upon section 601.

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Lemon was premised upon the violation of a constitutional rather than a statutory right. 370 F.2d at 852.

[57] The absence of any control over segregation distinguishes Simkins v. Moses H. Cone Mem. Hosp., 323 F.2d 959 (4th Cir. 1963), *cert. denied*, 376 U.S. 938 (1964). In *Simkins* it was held to be a violation of the due process clause of the fifth amendment for a private hospital receiving federal assistance (Hill-Burton funds) to "tolerate" separate-but-equal facilities. Obviously, the hospital administration could prohibit the discriminatory practices. In Rackley v. Board of Trustees of Orangeburg Regional Hosp., 238 F. Supp. 512 (E.D.S.C. 1965), § 601 was held violated by the maintenance of separate facilities in a private hospital receiving federal funds. However, the *Rackley* court found prohibited state action, and it may fairly be said that the real significance of federal funds in *Rackley*, as in *Simkins*, was its use as a vehicle to find sufficient state involvement in the private institution so as to bring to within the fourteenth amendment's prohibitions. Burton v. Wilmington Parking Authority, 365 U.S. 715 (1961). Allegations that the situs chosen for a housing project fosters discrimination may raise a fourteenth amendment issue, but the evidentiary burden to overcome the presumption that officials have acted in good faith is great. *E.g.*, Thompson v. Housing Authority, 251 F. Supp. 121 (S.D.Fla. 1966).

[58] See note 56 *supra.*

[59] 373 F.2d at 5.